Local 32B-32J Service Employees International Union, AFL-CIO (Star Security Systems, Inc.) *and* Monty Greys. Case 29-CB-4636

February 11, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 17, 1982, Administrative Law Judge Arthur A. Herman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent, Local 32B-32J Service Employees International Union, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(a) and substitute the following:

"(a) Causing Star Security Systems, Inc., to make retroactive dues deductions from the pay of employees for a period prior to 30 days after the execution date of the contract with Star Security Systems, Inc."

2. Substitute the attached Appendix B for that of the Administrative Law Judge.

[1] The Administrative Law Judge found, and we agree, that the Respondent Union violated Sec. 8(b)(1)(A) of the Act by causing the Employer to make retroactive dues deductions for a period prior to the execution date of the collective-bargaining agreement. While the Administrative Law Judge further concluded that such conduct also violated Sec. 8(b)(2) of the Act, we find it unnecessary to consider or pass on this holding since it cannot affect the scope of the remedy.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT cause Star Security Systems, Inc., to make retroactive dues deductions from the pay of employees for a period prior to 30 days after the execution date of the contract with Star Security Systems, Inc.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL reimburse or refund to the employees listed on Appendix A attached to the Administrative Law Judge's Decision the dues which were unlawfully deducted and transmitted to us plus interest.

LOCAL 32B-32J, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

DECISION

STATEMENT OF THE CASE

ARTHUR A. HERMAN, Administrative Law Judge: This case was heard by me on May 17, 1982, in Brooklyn, New York, pursuant to a charge filed by Monty Greys, an individual, and served by certified mail on August 4, 1981, and a complaint issued on September 30, 1981. The complaint presents two questions: (1) whether Local 32B-32J Service Employees International Union, AFL-CIO, herein called the Union or Respondent, violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act by causing Star Security Systems, Inc., herein called the Employer, to deduct and transmit dues of employees to the Union for a period prior to 30 days after the execution of their collective-bargaining agreement; and (2) did the Union, in violation of Section 8(b)(1)(A), fail and refuse to furnish information to its employees concerning the reason for the deduction of the dues. Respondent has admitted certain facts, but it denies all allegations that it has committed any unfair labor practices.

Upon the entire record, including my observation of the witnesses, and after due consideration of the able briefs filed by the General Counsel and Respondent I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Star Security, a New York corporation, is engaged in providing security services. During the 12 months prior to the issuance of this complaint, a representative period,

Star Security performed services valued in excess of $50,000 for various enterprises engaged in interstate commerce by virtue of the fact that they receive goods and materials valued in excess of $50,000 directly from firms located outside New York State. Respondent admits, and I find, that Star Security is an employer within the meaning of Section 2(2) of the Act, and that it is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE RESPONDENT LABOR ORGANIZATION

It is admitted and I find that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. The Union acknowledges, and I find, that Aaron Reid, a business agent for the Union, is, and has been, an agent of the Union within the meaning of Section 2(13) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The facts are not in dispute concerning the deduction of dues retroactively. Star Security was awarded a contract to supply guard services on the Queens College campus for the City University of the city of New York. This service began on July 1, 1980, and Star employed 47–50 guards for this purpose. In November 1980, the Employer was notified by the New York State Labor Relations Board that two labor organizations[1] were interested in representing these employees. The state board held an election among the employees and, on or about December 29, 1980, Respondent was certified as the exclusive representative of Star Security employees. Thereafter, negotiations between the Union and the Employer ensued, and were finalized by a letter of acceptance dated March 27, 1981 (G.C. Exh. 4), adopting the 1978 Service Employees Association Agreement with modifications and making it effective retroactively to July 1, 1980.[2] During the months of March and April 1981, most of the employees in the unit signed dual purpose cards for the Union—applications for membership and authorizations to deduct dues, initiation fees, and assessments.[3] Robert Stabile, the Employer's labor relations manager, testified that pursuant to a conversation he had with Kevin McCulloch, Respondent's assistant to the president, it was agreed that dues would be deducted commencing March 1, 1981.[4] Actually, the Employer's records show that dues was first deducted from wages for the month of April 1981.[5] Thereafter, according to Stabile's testimony, the Employer received a dues remittance report from the Union for May 1981, which showed retroactive dues due in the arrears column. Stabile called McCulloch and was advised that the Union had decided to take retroactive dues. Pursuant to that request, the Employer deducted dues from its employees' wages retroactive to August 1, 1980. On cross-examination Stabile stated that the Union, at no time, sought to have any employee discharged or otherwise discriminated against because of his failure to pay dues or to meet the requirements of the union-security clause in the contract. The Employer ceased servicing Queens College on June 30, 1981.

The General Counsel's second and last witness was the Charging Party, Monty Greys, whose testimony related to the second issue in the case, i.e., failure and refusal to furnish information to employees concerning the deductions. Greys testified that he had been employed as a guard at Queens College before Star was awarded the contract, and that he continued to work there as an employee of Star. Greys stated that during the month of May 1981, in three consecutive paychecks, deductions of dues from his wages were made totaling $100, whereupon he and about 30 other employees sought and had a meeting with Aaron Reid, Respondent's business agent, in the security house at Queens College, seeking an explanation for the deduction. Reid advised them that he did not know the reason for the deduction but that he would find out and get back to them on it. According to Greys, Reid never got back to them. However, on cross-examination, Greys stated that although he never attempted to contact Reid again, other employees did and that, in fact, Reid held another meeting with employees on the 8 a.m. shift, which Greys did not attend.

B. *The Alleged Violations of the Act*

The initial issue before me is whether the Union violated Section 8(b)(1)(A) and (2) of the Act by causing the Employer to deduct dues of employees for a period of time prior to the execution of the collective-bargaining agreement, which contained a valid union-security clause and also provided for checkoff of union dues.

The Board has long held that a union-security clause may not be applied retroactively.[6] It also is well established that the date of execution, not the effective date of a collective-bargaining agreement, governs the validity of such a clause.[7] In the instant case, no contract existed prior to March 27, 1981, when the Employer and the Union executed the agreement; therefore, no obligation to pay dues prior to that date existed.

Respondent contends, however, that at no time did the Union coerce the employees or threaten to take any action against them for their failure to pay retroactive dues and it further asserts that each employee voluntarily executed dues-checkoff authorizations which provided:

> I do hereby authorize my employer to deduct . . . from my wages *earned* and to be earned *by me while employed* . . . *such amounts* as the Union shall from time to time, in accordance with its constitu-

[1] Respondent and Teamsters Local 803.

[2] The collective-bargaining agreement contains a valid union-shop clause and a dues-checkoff provision. (See G.C. Exh. 3.)

[3] See G.C. Exhs. 2(a)–(n). Of the 42 cards submitted, 25 were executed by employees prior to March 27, 1981, and only 1 was executed after April 27, 1981.

[4] This conversation was memorialized by a note written by Stabile to himself on March 20, 1981 (G.C. Exh. 5), and a memo by Stabile to the Employer's payroll office in Corona, New York (G.C. Exh. 6).

[5] See G.C. Exh. 7.

[6] *Namm's, Inc.*, 102 NLRB 466 (1953).

[7] *Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Tech Weld Corporation)*, 220 NLRB 76 (1975).

> tion and bylaws, require as *monthly dues* and any amounts as may be hereafter be levied by the Union as initiation fees or assessments. . . . [Emphasis supplied.]

It argues that based on the specific language, "from my wages earned and to be earned," the employees were put on notice that a request for retroactive dues might be made.

While it has been held that an employee may voluntarily pay dues for a period before the execution of an agreement,[8] that freedom of choice has not been afforded the employees in the instant case. The very nature of the dual-purpose card was such that it did not allow the employees the choice to refrain or not from paying retroactive dues while agreeing to pay periodic dues through a dues-checkoff authorization. And the fact that 25 of these dual-purpose cards were signed by employees prior to the execution of collective-bargaining agreement, i.e., at a time when membership in the Union was not a requirement for retention of employment, does not alter the effect of the dual-purpose cards on the employees.

Also, Respondent attempts to distinguish the *Namm's* case, *supra*, from the instant case by pointing out that unlike the *Namm* case, the Union herein never conditioned "good standing" status upon payment of back dues,[9] nor did the Union threaten to discharge or cause anyone to be discharged for failure to pay back dues. In view of the fact that the Employer so readily complied with the Union's request for back dues and forwarded the moneys to the Union, there was no necessity for the Union to threaten or cause any employee to be discharged. But, even so, as the Board said in *Namm's*: ". . . the Union's requirement of back dues to achieve membership in good standing, which the union-shop agreement made a condition of employment, necessarily conveyed the implied threat to employees that they risked discharge if they failed to comply, as was forcefully demonstrated in employee Goldes' discharge . . . ." In reaching this conclusion, the Board overruled the Administrative Law Judge despite his finding that no request was made by the union to the company for the discharge of employees who refused to tender the back dues.

Inasmuch as any dues obligation under the union-security clause herein could only have started to accrue from the date of the contract's execution March 27, 1981, and not the date to which the contract was made retroactive July 1, 1980, I find that by causing the Employer to transmit back dues from August 1, 1980, the Union violated Section 8(b)(2) and (1)(A) of the Act.[10] I shall therefore order that Respondent cease and desist from such activity and that it reimburse the affected employees for dues deducted during the retroactive period.[11]

Insofar as the second allegation is concerned, i.e., whether the Union failed and refused to furnish the employees with information regarding the deductions, I find a failure on the part of the General Counsel to offer sufficient proof to sustain the allegation. I found Greys to be a most reluctant witness on cross-examination, imbued with a passion not to answer Respondent's counsel's poignant questions, but to argue with him instead. Despite this attitude, Respondent's counsel did succeed in getting Greys to admit that Reid did have a second meeting with employees, and I draw an inference from that that he conveyed to them the information they had sought at the first meeting. Under the circumstances, I conclude that the General Counsel has not met his burden of proof necessary to sustain the allegation, and I therefore shall dismiss that portion of the complaint.[12]

Conclusions of Law

1. Star Security Systems, Inc., is, and at all times material herein has been, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Local 32B-32J Service Employees International Union, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. By causing Star Security to deduct union dues from the wages of its employees for a period prior to 30 days after the execution of their collective-bargaining agreement, and transmit said moneys to the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent did not engage in any other conduct violative of Section 8(b)(1)(A) of the Act as alleged in the complaint.

Remedy

As Respondent has been found to have engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has caused the unlawful deduction of dues from employees, I shall recommend that it be required to reimburse the employees for the moneys so exacted, plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section

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[8] *International Union of District 50, et al., UMW (Ruberoid Company)*, 173 NLRB 87, fn. 2 (1968).

[9] I find that the dual-purpose card plus the union-security clause in the collective-bargaining agreement certainly did condition "good standing" status upon payment of back dues.

[10] *Namm's, supra.*

[11] During the course of the hearing, pursuant to a stipulation of the parties, I received into evidence the Employer's payroll records of the employees from whom dues was deducted and transmitted to the Union. (See G.C. Exh. 8.) Thereafter, the General Counsel saw fit to attach to his brief a listing of the affected employees and the amounts of retroactive dues that were unlawfully deducted from their wages. I hereby incorporate the listing into my Decision as "Appendix A" [omitted from publication] for purposes of compliance with my recommended Order.

[12] In reaching this conclusion, I also rely on the General Counsel's failure to demonstrate that the Union has acted in an arbitrary, discriminatory, or bad-faith manner.

10(c) of the Act, I hereby issue the following recommended:

ORDER[13]

The Respondent, Local 32B-32J Service Employees International Union, AFL-CIO, New York, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing Star Security Systems, Inc., or any other employer, to deduct union dues from the wages of employees for a period prior to 30 days after the execution of any collective-bargaining agreement to which it is a party, and transmit said moneys to the Union.

(b) In any like or related manner restraining or coercing employee members in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Reimburse or refund to the employees listed on "Appendix A" [omitted from publication] the dues which were unlawfully deducted and transmitted to the Union, plus interest as set forth above in the section of this Decision entitled "Remedy."

(b) Post at Respondent's business office and meeting hall copies of the attached notice marked "Appendix B."[14] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 29 copies of the aforementioned notice for posting by the Employer, if willing, in places where notices to employees are customarily posted, copies of said notices, to be provided by the Regional Director for Region 29, shall, after being duly signed by Respondent's official representative, be forthwith returned to the Regional Director for such posting.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the remainder of the complaint be, and it hereby is, dismissed.

[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."